

BEFORE THE
Federal Communications Commission
 WASHINGTON, DC 20554

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In the Matter of)
)
 Communications Assistance for)
 Law Enforcement Act)

CC Docket No. 97-213

**COMMENTS OF
 PRIMECO PERSONAL COMMUNICATIONS, L.P.
 REGARDING EXTENSION OF THE CALEA COMPLIANCE DATE**

PrimeCo Personal Communications, L.P. ("PrimeCo"),¹ hereby files these comments urging the Commission to extend, for *all* telecommunications carriers, the compliance deadline for the assistance capability requirements in the Communications Assistance for Law Enforcement Act ("CALEA").² As discussed below, an extension of the compliance deadline is warranted because compliance with these requirements "is not reasonably achievable through the application of technology available within the compliance period."³ Moreover, a blanket extension applicable to all telecommunications carriers subject to CALEA is the most efficient mechanism for the Commission to address this problem. Otherwise, the Commission and each subject carrier (as well as their equipment vendors) will have to spend significant resources in the preparation, filing, and processing of individual requests for extension. Accordingly, PrimeCo

¹ PrimeCo is the licensee or the general partner/majority owner in the licensee in 11 broadband MTA PCS licenses. On April 21, 1998, PrimeCo petitioned the Commission for an extension of the CALEA deadline arguing that delays and disputes regarding the publication of the final capacity notice and the capability standard, have rendered it impossible for PrimeCo to obtain CALEA-compliant modifications from its vendors in time to meet the current October 25, 1998 deadline. *See* PrimeCo Petition for Extension 2-11 (April 21, 1998). PrimeCo's Petition is incorporated herein by reference.

² *See Public Notice*, "Communications Assistance for Law Enforcement Act, CC Docket No. 97-213," DA 98-762 (April 20, 1998).

³ 47 U.S.C. § 1006(c)(2).

urges the Commission to extend by two years the date by which all telecommunications carriers must comply with CALEA's capability assistance requirements.⁴

I. EXTENSION OF THE CALEA ASSISTANCE CAPABILITY COMPLIANCE DATE IS JUSTIFIED

The Communications Act specifies that a "telecommunications carrier" "may petition the Commission for one or more extensions of the deadline for complying with the assistance capability requirements."⁵ The Act further provides that an extension should be granted "if the Commission determines that compliance with the assistance capability requirements . . . is not reasonably achievable through the application of technology available within the compliance period."⁶ The record before the Commission clearly demonstrates that this statutory standard is satisfied in this case.

⁴ PrimeCo further reserves the right to seek additional extensions, if circumstances so require. 47 U.S.C. § 1006(c)(1).

⁵ 47 U.S.C. § 1006(c)(1).

⁶ 47 U.S.C. § 1006(c)(2). PrimeCo notes that the Commission has tentatively concluded that petitioners seeking an extension of the CALEA compliance deadline must meet the standards set forth in Section 109 as well as Section 107 of CALEA, 47 U.S.C. §§ 1006(c)(2), 1008(b)(1). *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, FCC 97-356 ¶ 50 (Oct. 10, 1997). This conclusion is wrong. As the FBI and others have noted, "[S]ections 107 and 109 serve distinctly different purposes under CALEA." FBI Reply Comments at 15 ¶ 24. Section 107 permits carriers to obtain an extension of the October 25, 1998 compliance date, if the necessary technology will not be commercially available before the deadline. 47 U.S.C. § 1006(c)(2). Section 109, on the other hand, presupposes that CALEA-compliant technology is available to carriers. 47 U.S.C. § 1008(b)(1). The "reasonably achievable" standard in that context deals with the question of whether implementation of the existing, commercially available solutions "would impose significant difficulty or expense on the carrier or the users of the carrier's systems." *Id.* Consequently, the Section 109 factors should not be considered in the context of section 107 extension petitions. *See* FBI Reply Comments at 15-16.

Indeed, it is undisputed that CALEA-compliant technology will *not* be available by October 25, 1998.⁷ PrimeCo's two principal switch vendors, Lucent and Motorola, have each advised PrimeCo that, due to the circumstances discussed above, they will be unable to make available the modifications PrimeCo needs to comply with the industry's standard by October 25, 1998.⁸ For this reason, both vendors have asked the Commission to extend the capability compliance date by two years.⁹

On April 21, 1998, PrimeCo petitioned the Commission for an extension of the CALEA deadline. Therein, PrimeCo demonstrated that delays and disputes regarding the publication of the final capacity notice and the capability standard, have rendered it impossible for PrimeCo to obtain CALEA-compliant modifications from its vendors in time to meet the current October 25, 1998 deadline.¹⁰ Moreover, PrimeCo showed that these delays and disputes were outside of its control. More specifically, the Congressionally-designed CALEA implementation plan has failed to work primarily because: (a) the FBI did not timely publish its

⁷ See, e.g., AT&T Wireless/Ericsson/Lucent Petition for Extension (March 30, 1998); AirTouch Communications/Motorola Petition for Extension (May 5, 1998); January 1998 FBI Implementation Report; TIA Petition for Rulemaking (April 2, 1998); CDT Petition for Rulemaking (March 26, 1998); AirTouch Comments, CC Docket No. 97-213, at 4 (Dec. 12, 1997)(stating "even the FBI acknowledged during a November 14, 1997 meeting with industry that CALEA's current compliance date of October 25, 1998 cannot now be met.").

⁸ Indeed, the TIA has advised the Commission that it is "impossible" for the industry to meet the looming October 25, 1998 compliance deadline and that as a result, the Commission should "act now to grant all telecommunications carriers a two-year extension." TIA Reply Comments at 3 and 9 (emphasis in original).

⁹ See AT&T Wireless/Ericsson/Lucent Petition for Extension; AirTouch/Motorola Petition for Extension; Motorola Comments, CC Docket No. 97-213, at 11 (Dec. 12, 1997); Motorola Reply Comments, CC Docket No. 97-213, at 7-9 (Feb. 11, 1998).

¹⁰ PrimeCo Petition for Extension at 2-11 (April 21, 1998).

capacity requirements; (b) the FBI has impeded the industry's ability to publish standards implementing the capability requirements; and (c) the FBI delayed raising with the Commission its concerns that the industry standard was deficient because it did not include certain additional "punch list" capabilities.¹¹

In fact, law enforcement agencies now appear to have accepted the necessity for an extension of the CALEA deadline, at least as to those carriers providing wireline, cellular, and broadband PCS services covered by the industry implementing standards, J-STD-025. Thus, as part of a recent *ex parte* presentation, the FBI/DOJ advised the Commission that "the [CALEA] compliance date *should be extended* for a period of 18 months after [its] Order is issued in this proceeding."¹² Moreover, the Attorney General advised Congress that manufacturers will require at least 18 months *after* the Commission order resolving the pending deficiency petitions to build compliant equipment.¹³ While PrimeCo does not accept the assertions that an 18-month extension is adequate,¹⁴ the fact remains that *all* parties agree that an extension of the CALEA deadline is warranted.

¹¹ *Id.*

¹² Correspondence from David Yarbrough, FBI, to Magalie Salas, FCC Secretary, CC Docket No. 97-213, at 2 (April 14, 1998) (emphasis added) ("FBI *Ex Parte*").

¹³ See Testimony of the Attorney General before the House Appropriates Subcommittee for Commerce, State, Justice, the Judiciary and Related Agencies (Feb. 26, 1998).

¹⁴ The manufacturers, the firms fundamentally responsible for implementing the new capabilities, have stated they will need "24-30 months of development before [they] can even release a software package containing new features." TIA Comments, CC Docket No. 97-213, at 9 (Dec. 12, 1997). PrimeCo also agrees with TIA that the work should be undertaken by TR-45.2, the industry body which established J-STD-025. See TIA, Petition for Rulemaking, CC Docket No. 97-213, at 11-12 and n. 11 (April 2, 1997). In addition to the standards development period, carriers will need time to acquire, install, and test CALEA-compliant modifications.

II. EXPEDITIOUS GRANT OF A BLANKET, INDUSTRY-WIDE EXTENSION WOULD BE THE MOST EFFICIENT WAY TO ADDRESS THE CALEA COMPLIANCE DEADLINE

The *Public Notice* also seeks comment on how best to “streamline the process for granting extensions” and to “reduce the administrative burden on both the affected parties and the Commission.”¹⁵ PrimeCo submits that efficiency dictates that the Commission should enter a “blanket” extension order applicable to all carriers subject to CALEA, and do so expeditiously.

All carriers subject to CALEA are facing the same predicament — for reasons beyond their control, they will not be able to meet the current CALEA assistance capability deadline. As the Commission has recognized, granting blanket relief in such circumstances “prevent[s] the repeated expenditure of carrier and staff resources to revisit . . . issues already examined.”¹⁶ The benefit of this policy is readily apparent in the instant proceeding.

Indeed, the duplication of effort cited by the Commission has already begun to occur. As noted above, PrimeCo filed a petition for extension of the CALEA compliance deadline on April 21, 1998. In addition, PrimeCo is aware of extension petitions which have been filed by: (a) AT&T Wireless (jointly with Ericsson and Lucent); (b) AirTouch Communications, Inc. (jointly with Motorola, Inc.); (c) AirTouch Paging, Inc.; and (d) Ameritech

¹⁵ *Public Notice* at 4.

¹⁶ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket Not. 96-128, *Memorandum Opinion and Order*, DA 98-481, at ¶ 47 (March 9, 1998); *see also Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act*, 8 FCC Rcd 6828, 6841 ¶ 90 (1993) (“[W]e are persuaded that the expense and delay of obtaining waivers in individual cases may be prohibitive . . . [W]e determine that such a blanket waiver will eliminate a significant number of waiver requests thereby reducing the administrative burden on the industry and the Commission.”).

Operating Companies and Ameritech Mobile Communications, Inc. (“Ameritech”).¹⁷ Moreover, the Cellular Telecommunications Industry Association, the Personal Communications Industry Association, and the United States Telephone Association filed a joint pleading on April 9, 1998 asking, among other things, for the Commission to grant an industry-wide extension of the CALEA deadline.¹⁸ These petitions all raise fundamentally similar issues regarding an extension of the CALEA deadline and the Commission should expect that the number of similar petitions will proliferate if it does not promptly enter a blanket extension order. Thus, a blanket extension should prevent the needless expenditure of resources by equipment manufacturers, carriers, and Commission staff in repeatedly addressing issues that have already been examined.¹⁹

In addition to a blanket extension, however, the Commission must also act swiftly if the efficiency benefits of an extension are to be realized. In the absence of an extension quickly granted, carriers and equipment manufacturers will have to begin expending resources in preparing individual extension petitions as a means of protecting themselves in the face of the rapidly approaching compliance date. Such an expenditure of resources would be wasteful and

¹⁷ AT&T Wireless/Ericsson/Lucent Petition for Extension; AirTouch/Motorola Petition for Extension; AirTouch Paging Petition for Extension (May 4, 1998); Ameritech Petition for Extension (April 24, 1998).

¹⁸ *Public Notice* at 4 n.6. All of these filings are in addition to the many comments and reply comments already filed in the Commission’s rulemaking proceeding which seek an industry-wide extension of the compliance deadline.

¹⁹ In addition, as noted, the FBI appears to have reversed its previous objection to a blanket extension — *at least for carriers covered by the industry standard*. See FBI *Ex Parte* at 2 (April 14, 1998), *compare*, FBI Reply Comments, CC Docket No. 97-213, at 5-6 ¶ 7 (Feb. 11, 1998); FBI/DOJ, Joint Petition for Expedited Rulemaking, CC Docket No. 97-213, at 48 ¶ 84 (March 27, 1998). PrimeCo submits further that such an extension is also within the Commission’s statutory mandate to “*provide a reasonable time and conditions for compliance with and transition to*” the new standards. 47 U.S.C. § 1006(b)(5) (emphasis supplied).

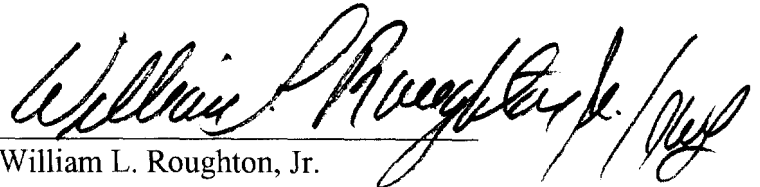
would undermine the benefits of the relief sought. PrimeCo therefore encourages the Commission to act quickly on this matter.

CONCLUSION

In sum, because compliance with these requirements “is not reasonably achievable through the application of technology available within the compliance period,”²⁰ PrimeCo respectfully requests the Commission to expeditiously grant all telecommunications carriers and service providers subject to CALEA, a two-year extension of the date by which they must comply with CALEA’s assistance capability requirements.

Respectfully submitted,

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May 8, 1998

²⁰ 47 U.S.C. § 1006(c)(2).

CERTIFICATE OF SERVICE

I, Shelia L. Smith, hereby certify that I have on this 8th day of May, 1998 caused a copy of the foregoing Comments to be served by first class U.S. mail, postage prepaid, to the following:

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